

Agenda

Item #2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: June 15, 2010

Re: Request by Beardsley Campaign for Waiver of Late-Filing Penalty

Bill Beardsley was a candidate for governor in the 2010 Republican primary election. The campaign was required to file its first campaign finance report by 11:59 p.m. on Tuesday, April 27, 2010. The campaign filed the report roughly two hours late at 1:53 a.m. in the morning on Wednesday, April 28. Applying the formula in 21-A. M.R.S.A. §1020-A(4-A), the preliminary penalty is \$3,009.74 (1% of the total contributions in the report).

Through a letter dated May 24, 2010, campaign treasurer Glenn D. Goodwin requests a waiver of the penalty. He explains that at about 8:00 p.m. on April 27, he "made attempts to upload spreadsheet information to [the Commission's e-filing] website, but could not succeed with this procedure."

At your February 2010 meeting, you considered the Commission's data upload feature in connection with a request by the Eliot Cutler campaign for a waiver of a late-filing penalty. If a campaign is saving its contribution and expenditure information electronically in Microsoft Excel or Quickbooks, the software can export the data in electronic files known as CSV (comma separated value) files. The campaign may upload the CSV files to the Commission's website electronically, provided that the files are in the exact format required by the Commission's e-filing website. I presume that the system did not accept the data of the Beardsley campaign because it was not stored in exactly the way the system needed it.

Staff Recommendation

The Commission staff recommends a complete waiver of the monetary penalty. We believe mitigating circumstances set forth in 21-A. M.R.S.A. § 1020-A(2) are present that warrant a full waiver:

- *No harm to the public.* Under 21-A. M.R.S.A. § 1020-A(2), the Commission may waive a penalty in whole or in part if it is disproportionate to the harm suffered by the public from the late disclosure. In this instance, the only harm to the public was that it could not see the Beardsley campaign information for two hours in the early morning of Wednesday, April 28 (from midnight to 1:53 a.m.).

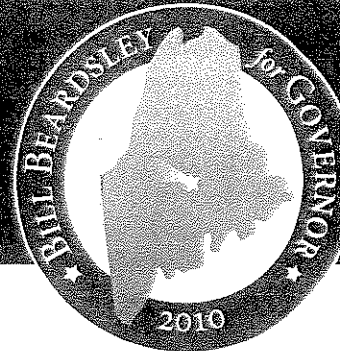
- *Good faith of campaign.* The campaign argues that “a bona fide effort was made to file the report” by the 11:59 p.m. deadline. This is a mitigating circumstance listed in 21-A M.R.S.A. § 1020-A(2). The Commission staff knows of no reason to doubt Mr. Goodwin’s good intentions to file on time.
- *Level of experience of treasurer.* Under 21-A. M.R.S.A. § 1020-A(2), the Commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the campaign. This was the first time the Beardsley campaign filed a financial report, and the first time using the CSV upload feature. Most campaigns using the data upload feature understand its limitations after using it the first time and allow greater time for the data upload in subsequent filings.

So, the Commission staff recommends finding that the report was late but assessing no monetary penalty.

Thank you for your consideration of this memo.

BILL BEARDSLEY GOVERNOR *for* MAINE

PO Box 8421, Bangor, ME 04402
PH: 207.807.0994
beardsley2010@gmail.com
www.BillBeardsley.com

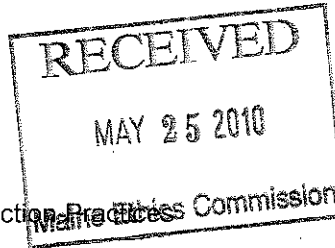


VISION.

LEADERSHIP.

PROSPERITY FOR MAINE.

Kevin F. Johnson
Candidate Registrar
State of Maine
Commission of Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135



May 24, 2010

Dear Kevin:

Re: Late filing of report

Unfortunately, the report due from the Bill Beardsley for Governor Campaign Committee by midnight on April 27, 2010 was filed in an untimely manner. The Report was filed on April 28th at 1:53 a.m.

At approximately 8 p.m. on April 27th I had the information prepared, and ready for a timely filing. I made attempts to upload spreadsheet information to the website, but could not succeed with this procedure. At about 9 p.m. I decided to manually input the information on the various screens for each form in an effort to comply with the deadline of the report. The task of manually entering the information was exacerbated by a somewhat slow recording on the website of each entry before another could be made. In the end, the report was filed, and every effort was made to complete a timely filing. However, the initial reliance on the upload feature, and the amount of data to manually input was too much. The report was tardy by 113 minutes.

As you know, Campaign Manager Michael Pajak made a phone call to Executive Director Jonathan Wayne at the start of business the very next morning to report the problem. It is my understanding Mr. Wayne indicated to Mr. Pajak that the upload procedure and the rigidity of the website have caused problems for others as well, and ours was not the first campaign to have issues uploading files. Further, the candidate and myself have not filed these reports in the past. This was an initial experience in working with the website. As mentioned in your letter, a critical question is, "was the public harmed in any way for the tardiness of the filing?" I think that any measurable public harm is very unlikely, given the report was filed just after the deadline, and most of the public was still asleep when the report was filed at 1:53 a.m. Albeit tardy, the report was available to your office when you arrived on April 28th.

I, as the treasurer, and everyone associated with the campaign recognize the requirement to file timely, and we do not take this matter lightly. Information has already been entered for our upcoming report and our filing deadlines in the future will be met on a timely basis.

Therefore, based on the above information we request consideration for the abatement of the penalty. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Glenn".
Glenn D. Goodwin

21-A MRSA § 1020-A. FAILURE TO FILE ON TIME

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[1995, c. 483, §15 (NEW) .]

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (AMD) .]

B. An error by the commission staff; [1999, c. 729, §5 (AMD) .]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD) .]

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2009, c. 190, Pt. A, §13 (AMD) .]

[2009, c. 190, Pt. A, §13 (AMD) .]

3. (TEXT EFFECTIVE UNTIL 8/1/11) Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

[1995, c. 625, Pt. B, §5 (AMD) .]

3. (TEXT EFFECTIVE 8/1/11) Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk in a town or city that has chosen to be governed by this subchapter on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

[2009, c. 366, §6 (AMD); 2009, c. 366, §12 (AFF) .]

4. Basis for penalties.

[2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§§4, 5 (RP) .]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

[2007, c. 443, Pt. A, §22 (AMD) .]

5. Maximum penalties.

[2001, c. 470, §8 (AMD); T. 21-A, §1020-A, sub-§5 (RP) .]

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; section 1017, subsection 4; and section 1019-B, subsection 3; [2009, c. 190, Pt. A, §14 (AMD) .]

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E; [2003, c. 628, Pt. A, §4 (AMD) .]

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; [2003, c. 628, Pt. A, §4 (AMD) .]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (AMD) .]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

[2009, c. 190, Pt. A, §14 (AMD) .]

6. Request for a commission determination. If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice by certified mail to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. The notice must be sent by certified mail. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. The 14-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 14-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[2009, c. 302, §5 (RPR) .]

7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[2009, c. 302, §6 (AMD) .]

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

[2007, c. 443, Pt. A, §25 (AMD) .]

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[2003, c. 628, Pt. A, §6 (NEW) .]

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (NEW) .]

10. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[2009, c. 302, §7 (RPR) .]

SECTION HISTORY

1995, c. 483, §15 (NEW). IB 1995, c. 1, §15 (AMD). 1995, c. 625, §B5 (AMD). RR 1995, c. 1, §10 (COR). RR 1995, c. 2, §38 (COR). 1999, c. 426, §§32,33 (AMD). 1999, c. 729, §5 (AMD). 2001, c. 470, §§7,8 (AMD). 2001, c. 714, §PP1 (AMD). 2001, c. 470, §11 (AFF). 2001, c. 714, §PP2 (AFF). 2003, c. 302, §4 (AMD). 2003, c. 448, §4 (AMD). 2003, c. 628, §§A3-6 (AMD). RR 2003, c. 1, §14 (COR). 2007, c. 443, Pt. A, §§21-25 (AMD). 2009, c. 190, Pt. A, §§13, 14 (AMD). 2009, c. 302, §§5-7 (AMD). 2009, c. 366, §6 (AMD). 2009, c. 366, §12 (AFF). MRSA T. 21-A, §1020-A, sub-§4 (AMD). MRSA T. 21-A, §1020-A, sub-§5 (AMD).

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STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

May 14, 2010

William H. Beardsley
P.O. Box 8421
Bangor, ME 04402

BY REGULAR AND CERTIFIED MAIL

Dear Mr. Beardsley:

RE: Late 42-Day Pre-Primary Campaign Finance Report Due April 27, 2010.

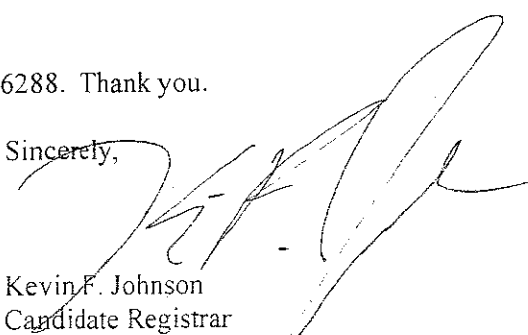
You filed a 42-Day Pre-Primary campaign finance report on April 28, 2010. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, the candidate's filing record, and the maximum penalty amount allowed under Maine Election Law (21-A M.R.S.A. § 1020-A(5)). Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report is \$3,009.74. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 14 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 14-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration.

NOTE: The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: A) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; B) an error by the Commission staff; C) failure to receive notice of the filing deadline; or D) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. Also, the Commission may waive a penalty in whole or in part if the Commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure.

If you have any questions, please contact me at 207-287-6288. Thank you.

Sincerely,


Kevin F. Johnson
Candidate Registrar

cc: Treasurer

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135 May 14, 2010

William H. Beardsley
P.O. Box 8421
Bangor, ME 04402

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$3,009.74 applies for the late filing of your 42-Day Pre-Primary campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Kevin Johnson at 287-6288.

Cut Along Dotted Line

For Office Use Only:
Account: CGEEP
Fund: 014 Approp: 02

To: Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: William H. Beardsley

RE: Penalty for late filing of 42-Day Pre-Primary Campaign Finance Report

Penalty ID: 1626

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

**Please Make Check or Money Order Payable to Treasurer, State of Maine
Or Pay Online at <http://www.maine.gov/online/ethics/penalties>**

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES 21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500 Greater amount of the total contributions received or expenditures made during the filing period

X .01 Percent prescribed for first violation

\$25.00 One percent of total contributions

X 2 Number of calendar days late

\$50.00 Total penalty

Mr. Beardsley:

Your penalty is calculated as follows:

Receipts/Expenditures: \$ 300,974.00

Percent prescribed: X 1%
\$ 3,009.74

Number of days late: X (1 Day)

Total penalty accrued: \$ 3,009.74

A penalty begins to accrue on the day following the due date of the report.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES 21-A M.R.S.A. § 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election,
11 days before an election, 42 days after an election, and for 24-hour reports;
\$1,000 for semiannual reports.